92-681

Supreme Court, U.S.
FILED
AUG 5 1992
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No. _____

IN THE ONE SUPREME COURT

FOR THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

==========

EDWARD G. NOVOTNY

Citizen/Petitioner

vs.

UNITED STATES, et al.

Respondents.

==========

PETITION FOR APPEAL IN THE NATURE OF CERTIORARI TO THE ONE UNITED STATES SUPREME COURT FOR THE UNITED STATES OF AMERICA

======

PETITION FOR WRIT OF CERTIORARI

Edward G. Novotny,
c/o, 13106 HWY 666, N.
Cortez, Colorado, U.S.A.
In Propria Persona
303-565-8353

QUESTIONS PRESENTED FOR REVIEW

1. Did the inferior administrative tribunal error by assuming jurisdiction over the Petitioner and subject matter.

2. Did the Administrative Tribunal error by denying Petitioner the Constitutionally secured Right of a Citizen to "trial by Jury" in ALL Criminal Cases as secured under the Constitution for the United States of America, Article III, Sec. 1, and 2, Clauses 1 and 3, and Articles of Amendment VI.

3. Did the inferior Tribunal error by allowing the Executive Branch to exceed their authority and limitations granted by Acts of Congress.

4. Did the inferior administrative tribunal error by imposing an excessive and unusual sentence/fine upon the Citizen Petitioner in contravention of Congress and Articles of Amendment VIII.

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EDWARD G. NOVOTNY

Citizen, Petitioner

vs.

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PETITION FOR APPEAL IN THE NATURE OF CERTIORARI TO THE ONE UNITED STATES SUPREME COURT

FOR THE UNITED STATES OF AMERICA

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Petitioner, Edward G. Novotny, timely respectfully prays that this Court enter an Order in the nature of writ of certiorari and of error to review the judgment of the United States Court of Appeals for the Tenth Circuit entered on

June 5, 1992.

OPINION BELOW

The court of appeals entered its opinion affirming the conviction of the petitioner of being in violation of one paragraph, of one section, (36 C.F.R. 261.6(h)), "removing any forest products (fuelwood) except as authorized by permit is prohibited," and further, 16 U.S.C. 551. The conviction was affirmed on June 5, 1992. The Tenth Circuit denied the petition for rehearing filed on June 22, 1992, by ORDER dated July 1, 1992.

JURISDICTION

On May 31, 1991, a Commissioner at a hearing, found Petitioner criminally guilty of being in violation of 36 C.F.R. 261.6(h) and, 16 U.S.C. 551. On June 5, 1992, the Court of Appeals for the Tenth Circuit issued an opinion affirming conviction. (Appendix A) A petition for rehearing with a request for

reconsideration was filed on June 22, 1992. The petition for rehearing was denied on July 1, 1992. (Appendix B)

The statutory basis for Tenth Circuit Jurisdiction was 28 U.S.C. Sec. 1291.

The jurisdiction of this court is invoked under Title 28 U.S.C. Sec. 1254(1), and under Art. 3, Sec. 2, Cl 2 of the United States Constitution, for the United States of America.

STATUTORY PROVISIONS INVOLVED

36 C.F.R. Sec. 261.6(h), Timber and other forest products:

> (h) Removing any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation.

16 U.S.C, Sec. 551 provides:

> "The Secretary of the Interior (Secretary of Agriculture) shall make provisions for the protection against destruction by fire and depredations upon the public forest and forest reservations (national forest) which may have been set aside or which may be hereafter set aside under the said Act of March third, eighteen hundered and

ninety-one [16 USCS Sec 471], and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forest thereon from destruction; and any violation of the provisions of this Act [This section and 16 USCS Sec 473 et seq.] or such rules and regulations shall be punished by a fine of not more than $500 or impisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States commissioner [magistrate] specially designated for the purpose by the court by which he was appointed, in the same manner and subject to the same Title 28 U.S.C. Sec. 1254(1), and under Art. 3, Sec. 2, Cl 2 of the United States Constitution, conditions as provided for in title 18, United States Code, #3401, subsections (b), (c), (d), and (e), as amended [18 USCS Sec. 3401(b) (e)] (June 4, 1897, c. 2, Sec 1, 30 Stat. 35; *** ."

STATEMENT OF CASE

Petitioner has both denied and challanged jurisdiction of the federal district tribunal from the begining.

The material facts giving rise to the conviction of the Petitioner, an

un-disputed Colorado State Citizen, have been straight forward and uncontroverted, and are as follows:

(1) Petitioner is an Article IV, Sec. 2, Cl 2, Citizen, domiciled in Montezuma County, within the Republic State of Colorado.

(2) Petitioner was stopped by Colorado State Patrolman, Steve Nowlin, on October 18, 1990, while traveling on County Road 31, at which time Petitioner was towing a trailer loaded with admitted firewood for personal use.

(3) Steve Nowlin and Forest Service Agent, Tracy Morse, appeared at the domicile of Petitioner, on October 31, 1990. Petitioner again explained that any firewood that he had was for personal use and not for sale. Further that he was not in any act of commerce. Petitioner explained that he had attempted to locate the law or regulation requiring him to

buy a permit, but no one from the forest agency could produce it. Nether agent ever produced any law or regulation requiring a permit. Both agents Morse and Nowlin admitted that they had taken an oath to support the United States Constitution.

(4) Petitioner was served with an Administrative "Violation Notice", alleging violation of 36 C.F.R. 261.6(h) and 16 U.S.C. Sec. 551, after the Petitioner denied that he was a "person" subject to the C.F.R. regulations.

(5) Petitioner appeared at the federal district tribunal Feb 8, 1991, in good faith and belief that he was to prepare for a trial by jury that he had previously demanded on 11-26-1990.

Petitioner objected to the commissioner that he did not understand the nature and cause of the charges. The transcript of the record will reflect

that the Petitioner did not enter a plea, even though the master docket wrongfully stated that he did on 2-8-1991. Commissioner Nottingham then informed the Petitioner that "You stole something from the National Forest. That is what you are charged with". Petitioner objected to the tribunal entering a Not Guilty plea in his behalf, and objected to the entire jurisdiction and proceedings.

(6) Petitioner filed a "Denial of Waiver of Jurisdiction Demand For Promulgation of Authority of this court," on 2-25-91, which was later denied.

(7) Petitioner, appearing without assistance of counsel, denying jurisdiction to the administrative commissioner, failed to appear at an administrative hearing set for March 29, 1991, and was subsequently arrested at his home in Cortez Colorado, incarcerated and transported to Denver Colorado, and

under threat, duress and coercion, was forced to post, and sign bond without objection.

(8) Petitioner filed numerous documents specially and not generally, challenging the jurisdiction of the administrative tribunal and the Commissioner thereof. This included filing "Petition To Recuse Judge Nottingham and Other U. S. District of Colorado Judgeships From Assignment", demanding an Article III, Sec. 1, judicial Power Judge, with attached Article III brief on 3-22-1991, and a "Petition in Abatement, and Entry of Apearance Specially and Not Generally, * * *" in "Affidavit form" on May 24, 1991, which were all arbitrarily denied coram non judice, by the Commissioner.

(9) The cause was heard before Commissioner Nottingham, on May 31, 1991, above and over the objections of

Petitioner. At which time, Agents Steve Nowlin and Tracy Morse appeared and testified against Petitioner, but could not establish from personal knowledge nor by any other substantive evidence, where the purported fuelwood came from, who cut it, nor produce any evidence that a Citizen of the State of Colorado was liable under any act of Congress, Statute nor could they produce any established law to substantiate the criminal intent/ charge/accusation.

At the hearing, and under sworn testimony Morse stated that Petitioner was "not a timber sale contractor, your a personal use firewood gatherer, and those are two separate entities." (trans. pa 77, #11-14) Further Morse admitted that the petitioner was not engaged in any act of commerce, (trans. pa 85, #13-22) and that the firewood was for nothing but personal use, and that Petitioner never

had a nexus of contract with the National Forest Service to be in violation of. (trans pa 105 #17-20) and (pa 54, #18 to pa 55 #4)

Further, agent Morse read into the record, which was Defendant's exhibit A, Title 36 C.F.R. 223.5(b) which states:

> "Free use will be granted individuals primarily to aid in the potection and cultural improvement of the forest. Except in unusual cases, the material will be restricted to dead insect infested or diseased timber, * * * ".

At the hearing, United States exhibits 2 and 3 plainly show pictures of a traliler load of dead insect infested logs, which Petitioner had in his possession.

United States witness Welch admitted by sworn testimony that the "National forest service land is under the stewardship of the U. S. forest service, Department of Agriculture". "We have administrative jurisdiction over the land." "They own nothing" (trans.pa 99,

#6-25) and that "the National Forest is reserved public land; there is a difference". (pa 100, # 7-8)

(10) Commissioner Nottingham being duly informed of both Law and fact summarily and arbitrarily found Petitioner guilty as charged, and set a sentencing hearing for Aug. 2, 1991.

(11) On July 24, 1991, Petitioner filed a "Motion to Vacate", with attached exhibits of Law and Statute, to Wit: (1)(Exhibit A) Act of the 55th Congress #35, allowing free firewood cutting and removal by the People for domestic use; (2)(Exhibit B) Act of the 55th Congress, #36 retaining the peoples' jurisdiction as a Citizen of the State; (3)(Exhibit C) Title 16 U.S.C. 477, allowing free use of timber and stone free of charge by the People; (4)(Exhibit D) Title 16 U.S.C. 480, where the Citizens and inhabitants shall not lose their rights as Citizens;

(5) (Exhibit E) 36 C.F.R. 223.5 (a) allowing free use of firewood by settlers and residents for domestic purposes, and (6)(Exhibit F) 36 C.F.R. 219.3 clearly stating that "timber production" does not include production of "fuelwood".

Plaintiff's Attorney filed no response, and Commissioner Nottingham, summarily denied the domument on, July 31, 1991

(12) On August 2, 1991 Commissioner Nottingham after being further informed of more facts and Law, sentenced Petitioner to 3 months incarceration at the federal detention center, and further ordered an excessive fine of 2500 I.M.F. obligations to be levied against Petitioner, upon arbitrary and capricious grounds, based upon hearsay, offering no understandable reason, nor citing any Law or contract violation, to substantiate the sentence, and without Corpus delicti.

(13) On Aug. 7, 1991, Petitioner received an "ORDER" from the tribunal stating the reason for the Petitioner's incarceration, to wit: "Because of what I thought were aggravating circumstances in this case, defendant was sentenced to serve a three-month term in prison". Further, it was stated that: "Indeed, it is my view that the defense of this case has been frivolous from beginning to end. I Therefore do not believe that defendant is entitled to bond on appeal."

REASONS FOR GRANTING THE WRIT

The Public Law, Statutes, and C.F.R. are clear. They authorize free use of firewood by the people for personal use.

The facts are clear, they will show that the Petitioner was in posession of firewood only for personal use, and was not engaged in any regulated activity insofar as the firewood was concerned.

The facts and record will plainly

reflect that the federal district Tribunal lacked personam and/or subject matter jurisdiction over the Petitioner, and that Petitioner was wrongfully convicted and sentenced for nothing more than exercising his RIGHTS that were both recognized and authorized by Congress, by Statute, secured by the Constitution for the United States of America, and which had already been ruled on and authorized by the U. S. Supreme Court.

Nether the federal district Tribunal nor the 10th Circuit Court have considered Petitioners secured rights, nor the Acts of Congress that the Statute relies on, that the Petitioner was convicted of being in violation of. Further the record will reflect that Petitioner had no contract with the Forest Service to be in violation of, nor was he engaged in any act that required specific performance,

nor had he committed an act of breach thereof, nor was there any established fact/Law violated.

If by some chance there is some unknown regulation or authority preventing the Petitioner's actions, which was never disclosed, then there is a firm possibility of a conflict of Law, which should be resolved by this Court.

PRINCIPALS OF LAW

The Petitioners conviction hinges on a number of things. First whether the Plaintiff and the Art. I, Sec. 8, Cl 9, Tribunal and Commissioner had personam and/or subject matter jurisdiction over the Petitioner, and whether or not there was any established/promulgated Law preventing his actions, to be in violation of. Government agencies are corporations and therefore must opperate by and through contracts. Or, there must be an act of commerce involved, by which

the Petitioner received finicial profit or benefit from, which could be regulated.

Government agencies are not allowed to exceed the authority granted to them by Congress. The commissioner stated that the Petitioner "stole something from the national forest". But the record will reflect that the National Forest, is public forest, and it is undisputed that the Petitioner is one of The People, that the public forest belongs to.

The Petitioner contends that he cannot steal what is his, nor steal something from the forest service which it does not own.

The record will reflect that he was a "personal use gatherer", which Congress and this Court has retained his right to, and has given him both permission and authorization, to gather firewood for personal use.

THE CHARGE

The Petitioner was charged with one count of, "removing any forest products (fuelwood) except as authorized by permit is prohibited," in violation of 36 C.F.R. 261.6(h), and then sentenced under 16 U.S.C. 551, at an Admistrative Tribunal hearing. The charge was brought, prosecuted and was based upon hearsay testimony and unsupported accusations, with no Corpus delicti, contract, or Law violation cited that clearly pertained to his charge.

THE EVIDENCE

All of the factual evidence concerning the issue have been presented by sworn testimony by the Respondent's own witnesses, or are contained in the record or charge. The Petitioner did not testify because his actions were authorized under the Common Law, and he took the possission that he was innocent

until proven guilty, since the Tribunal had denied his request for promugation of authorities. The Law presented by the Petitioner has not been overcome, nor disputed. There has been no facts or law presented that forbids or legaly restricts Petitioners actions, for the Petitioner to even attempt to overcome.

Petitioner was purportedly tried under a statute of the United States for an alleged criminal act, which by the Constitution for the United States of America is within the specified and enumerated Jurisdiction of an Article III, Judicial Power Court and Judge, and was wrongfully arrested and unconstitutionally tried, summarely convicted, and wrongfully sentenced by a legislative/executive "Commissioner" for an act authorized by public Law, Statute, C.F.R., by Congress, and recognized by the U. S. Supreme Court.

"The Secretary of the Interior may

permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bonal fide settlers, miners, residents, and ... for firewood, fencing, ... and other domestic purposes, as may be needed by such persons for such purposes; * * *." The Act of the 55th Congress, June 4, 1897, c. 2, Sec. 1, 30 Stat. 35:

Further it has been ruled upon by this Court that:

"That all citizens of the United States, and other persons, bona fided residents of the state of Colorado, * * * shall be, and are hereby, authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, * * *.", United States v. United Verde Copper Co, 196 US 207, at 210-211.

and further,

"The uses for which the timber may be felled or removed are limited by the wording of the act to building, agricultural, mining, or other domestic purposes." United States v. United Verde Copper Co, Supra, at 211,

A "Commissioner" is merely the quasi-judicial member of the Legislative/Executive branch, and cannot

set in an Article III judicial Power proceeding (See: U.S. vs. Ferreira, 13 How. 42, nor can such an Administrative employee usurp the Article III judicial Power of authority. (See: U. S. vs. Woodly, 726 F.2d 1328)

> "'Judge' is an application commonly assigned to non-article III adjudicators in the federal court system. Examples include Claims Court Judges, Tax Court Judges and Bankruptcy Judges. Accordingly, appending 'Judge' to the 'Magistrates' title renders it consistent with adjudicatores of comparable status." (See: Judicial Improvements Act of 1990, Public Law 101-650, 104 Stat. 5089, Legislative History, pg. 6877.

The quasi-judicial jurisdiction of the said Commissioner was an unconstitutional usurpation, and the Administrative proceedings was an encroachment upon the Right of Citizens to an Article III Judicial Power Court and Judge, and to a proceeding "in Law", under and Pursuant to the mandates of the Constitution for the United States of

America, Article III, Sec. 2, and Amendments V, VI, IX and X.

The record will reflect that the verdict entered by magistrate/ Commissioner, Nottingham is coram nom judice, for lack of jurisdiction over the alleged criminal subject matter.

The "Commissioner" has apparently assumed Authority, or we have a conflict of laws, or was highly frustrated about a Citizen demanding rights, and/or challanging the Tribunals authority and of objecting to excesses and abuses of the same.

We The People, did not authorize usurpations or abuses of Power such as occured in the inferior tribunals of the 10th Circuit. The indignant ORDER decreed on Aug. 7, 1991, evidences the bias, prejudice, and interests of the same said "Commissioner." "Aggravation" is a inhancement of a violent crime

committed, or an emotional state more condusive to "just-us" rather than Justice, and is not a reason in Law to usurp, abridge, or abuse the Public Offices or trust, or to put Petitioner in prison for.

Congress being empowered to regulate Commerce does not apply here as it has not even been claimed that Petioner was engaged in any interstate or commercial/ business activity.

Congress being empowered to Legislate in all cases that pertain to commerce activities,

> "The function to be exercised in that of regulation. The thing to be regulated is the Commerce described. In exercising the authority conferred by this clause of the constitution, Congress is powerless to regulate anything which is not commerce, as it is powerless to do anything about commerce which is not regulation." Carter vs. Carter Coal Co., 298 U.S. 238, 297, 80 L.ed 1160, (1935)

By sworn testimony, the Petitioner never had a contract with the National

Forest Service to be in violation of.

> Subject-matter jurisdiction under federal qestion statute thus exists over causes of action arising from contracts to which the government is a party. 28 U.S.C.A. 1331, Falls Riverway Realty vs. City of Niagara Falls, 754 F.2d 49, 55 (1985)

> Jurisdiction of the federal courts therefore can only regulate those in commerce, as ruled by the United States Supreme Court, in Carter v. Carter Coal Co., 298 U.S. 238, 80 L.ed. 1160,

Congress being empowered to

legislate in all cases whatsoever, over all Places purchased by Consent of the Legislature of the State in which the same shall be for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful buildings, does not apply here. (See: Art. I, Sec. 8, Cl 17) The Legislature of the State of Colorado did not grant the corporate United States authority over the Property in question, nor did the corporate U. S. purchase it. (See: Colo. Revised Statutes, JURISDICT-ION, ARTICLE 1, Index; 3-1-301; 3-1-102;

3-1-103) The record will reflect that their witness Welch, admitted that the forest service only has administrative jurisdiction over the public forest, and that they own nothing, which further substantiates the Petitioners claim.

Therefore the United States of America could not have jurisdiction over the Petitioner, by fact or Law, or the National Forest property that they convicted him for being on, since he is a Colorado State Citizen, without contract.

It is also declared herein that an uncontroverted superior lien, attachment and excheat is on file in the County Clerk and Recorders Office, for the County of Montezuma, in the Republic of the State of Colorado, as recordered in book 0643, at Page 818, concerning the same said property and rights to property. Neither Plaintiff/Respondent nor the "Commissioner" have right or

cause of action, and are wholly without authority or jurisdiction, as a matter of Law.

The mode of proceedings had in the inferior tribunal were those reminiscent of summary Star Chamber Proceedings, where the accused was brought before privy counsel, for him to prove he was inocent of the charge. The mode of procedure in a Case in Law is quite different and more exacting than the self serving nature of the proceedings had in the Administrative Tribunal. Trial by Jury is mandatory, not discretionary in this case. See: Sparf vs. U. S., 156 U.S. 51, Art. III, Sec 2, Cl 3 & 4, and Amend. VI, VII, IX, X.

It was cited in Duncan vs. State of Louisiana, 391 U.S. 145, at 155 that:

> "A right to jury trial is granted to criminal defendant in order to prevent oppressions by the Government". Singer vs. United States, 380 U.S. 24, 31, 13 1 Ed 2d 630, 635, 85 S.Ct. 783. (1965)

Federalist Papers No. 83, clearly explained the mandate of Trial by Jury, of which the instant case is but a repeat of the mischief, and clear violation of the meaning, intent and remedy, to wit:

> "The friends and adversaries of the plan of the Convention, if they agree on nothing else, concur at least in the value they set upon Trial by Jury; or if there are any differences between them it consists in this; the former regard it as a valuable safegaurd to liberty; the latter represent it as the palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation. and it would be altogether superfluous to examine to what extent it deserves to be esteemed useful or essential in a Representative Republic, or how much more merit it may be entitled to as a defense against the oppression do an hereditary monarch, that as a barrier to the tyranny of popular magistrates in a popular government. Discussions of this kind would be more curious that beneficial, as all are satisfied of the utility of the institution, and its friendly aspect to liberty.... Arbitrary impeachments, arbitrary methods of prosecuting pretended offenses, and arbitrary punishments upon arbitrary convictions have ever appeared to me to be the engine of judicial despotism...."

Little needs to be discussed in the instand case. Despotic and arbitrary methods of prosecuting a pretended offenses and arbitrary punishment on an arbitrary conviction was in fact and law what occured in the inferior Administrative Tribunal."

The trial and subsequent conviction would be properly reversed upon grounds of unconstitutional proceeding, violative of Petitioner's secured Rights and Liberties and proceedings had in contravention to the Law of the Land and forum.

Government agencies are corporations, and corporations can only act by contract, and it has been stated that Petitioner had no contract.

It is the contention of the Petitioner that the 10th Circuit Court has failed to consider mecessary principles of Law, such as Acts of

Congress and the determinations of the United States Supreme Court who have made it quite clear as to their intentions concerning government agencies, as it was held in many cases that:

> The regulation of agency of the United States must be issued within the powers conferred by Congress; if agency regulations go beyond what Congress has authorized, they are void. Federal Maritime Commission v. Anglo-Canadian Shipping Co., 335 F2d 255.

> Moreover, all courts, federal and state alike, take judicial notice of the public and general acts of Congress. St. Louis I. M. & S. R. Co. v Starbird, 243 US 592, 61 Led 917, 37 S Ct 462.

The record will reflect that the Petitioner was never informed of any increased fine or sentence for defending the charge, nor for asserting his rights, and deviates from original penalty assessment stated on the Violation Notice of $75.00. Even after his arrest, Commissioner informed the Petitioner that the maximum fine was "I suspect close to

$100.00, ***," (trans. pa 25, #19-20) with no mention of additional fine and/or imprisonment for defending.

The Tribunal Commissioner usurped and exceeded the mandates of the 55th Congress on June 4, as well as 16 USC 551, where the maximum fine was set at $500 dollars. The 2500 IMF inter-agency oblegation fine is further evidence of usurpation, and clearly in contravention and redundant to the Constitution for the United States of America, Amendments VIII, IX & X.

CONCLUSION

The writ of Certiorari should be allowed, the record reviewed, and the case remanded to a trial by jury to hear both the facts and Law, or reversed and dismissed for lack of jurisdiction, since by sworn testimony and established principles of Law, there has been no injury to the United States.

Further there can be no Common Law crimes against the United States, especially in this instance, where Congress and this Court recognized, secured and authorized the Petitioner/ Citizen to cut and remove the firewood for personal use, which he was charged and convicted of doing.

Signed without prejudice, 1-207 U.C.C., Amendments I, IX and X.
Respectfully submitted:

Edward G. Novotny

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In Propria Persona
303-565-8353

Filed June 5, 1992

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

EDWARD G. NOVOTNY,

Defendant-Appellant.

Filed June 05, 1992
Robert L. Hoecker, Clerk
No. 91-1279
(D.C. No. 91-CR-27)
(D. Colo.)

ORDER AND JUDGMENT*

Before MOORE, TACHA, and BRORBY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R.

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* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law or the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

Following a trial to the court, Defendant, appearing pro se, was convicted of removing timber from the San Juan National Forest without authorization, in violation of 36 C.F.R. Sec. 261.6(h), promulgated pursuant to 16 U.S.C. Sec. 551. After a hearing, the district court sentenced Defendant to three months' imprisonment and a fine of $2,500.00. We exercise jurisdiction under 28 U.S.C. Sec. 1291, and affirm.

Colorado State Patrol Trooper Steven Nowlin observed Defendant hauling a trailer load of aspen logs in the San Juan National Forest. Trooper Nowlin stopped Defendant because the lights on his trailer were not working properly. During the stop, Defendant said that he had acquired the aspen logs from the Salter Y

area of the San Jaun National Forest, and that he did not have a permit authorizing him to remove them from the forest. After Trooper Nowlin informed Defendant that he would advise the Forest Service that Defendant had removed wood from the forest without a permit, Defendant went on his way. A few days later, Trooper Nowlin accompanied Tracy Morse, a law enforcement officer for the Forest Service, to Defendant's residence where she served on Defendant a violation notice for removing wood from the forest without a permit. During that conversation, Defendant again said that he had taken the wood from the forest.

On appeal, Defendant requests reversal of his conviction and sentence on the following grounds: (1) the district court was without personal and subject matter jurisdiction over him, in part because, as a "free citizen," he is not

required to abide by 36 C.F.R. Sec. 261.6(h); (2) the law enforcement officers failed to adivse him of his Miranda rights; (3) There existed no probable cause for the charges against him because hearsay statements formed the basis of the charges; (4) he was not required to abide by 36 C.F.R. Sec. 261.6(h) because the Code of Federal Regulations is not law and because this case did not involve any injured party, contract, or commerce; (5) 36 C.F.R. 261.6(h) was not published in the Federal Register so Defendant had no notice that he could violate Sec. 261.6 (h); (6) he was denied his right to a jury trial; (7) he was denied his right to counsel; (8) various evidentiary rulings by the district court during trial were erroneous, and the trial court entered a not guilty plea for Defendant over his objection; (9) the evidence was insufficient to sustain the conviction;

(10) the district court interrupted Defendant's allocution at the sentencing hearing; (11) the sentence is excessive; and (12) the fine is unauthorized.

1. Jurisdiction

Defendant contends that the district court was without personal and subject matter jurisdiction. We review de novo the question of the district court's jurisdiction. United States v. Visman, 919 F.2d 1390, 1392 (9th Cir. 1990), cert. denied, 112 S.Ct. 442 (1991); see also United States v. Young, 952 F.2d 1252, 1255 (10th Cir. 1991) (we review de novo whether defendant's conduct is prohibited by a federal statute).

Subject matter jurisdiction over Defendant is conferred by 16 U.S.C. Sec. 551 (violators of regulations promulgated pursuant to Sec 551 are subject to criminal sanctions) and 18 U.S.C. Sec 3231 (federal district courts shall have

original jurisdiction of all offenses against the laws of the United States). Accord United States v. Langley, 587 F. Supp. 1258, 1265 (E.D. Cal. 1984)(Forest Service regulations may be enforced in federal court).

The basis for Defendant's contention that the district court lacked personal jurisdiction in not clear. Defendant's assertion that because he is a "free citizen," he is not required to abide by 36 C.F.R. Sec 261.6(h) has been rejected as "entirely frivolous." See United States v. Schmitt, 784 F. 2d 880, 882 (8th Cir. 1986) "In light of the fact that [Defendant was charged by an Information with violating 16 U.S.C. Sec 551 authorizing 36 C.F.R. Sec. 261.6(h)], appeared before the district court, and has offered this court no support for his lack-of-personal-jurisdiction contention, we find his argument frivolous." United

States v. Masat, 948 F.2d 923, 934 (5th Cir. 1991). Petition for Cert. filed, No 91-8108 (U. S. April 3, 1992). Defendant was subject to the restrictions imposed by 36 C.F.R. Sec. 261.6(h). We therefore hold that the district court had personal and subject matter jurisdiction.

2. Requirement of Miranda Advisement

Defendant asserts that Trooper Nowlin was required to advise him of his Miranda rights prior to asking him where he got the wood. We review for clear error the district court's conclusion that Defendant was not in custody for purposes of Miranda when he admitted that he had removed the trees from the national forest without a permit. Cordoba v. Hanraham, 910 F.2d 691, 693 (10th Cir.) cert. denied, 111 S. Ct. 585 (1990). Because a routine traffic stop of a motorist does not constitute custodial interrogation, no Miranda advisement was required. Berkemer

v. McCarty, 468 U.S. 420, 441 (1984); Cordoba, 910 F.2d at 693. Therefore, we perceive no clear error in the district court's refusal to grant relief based on a lack of Miranda warnings.

3. Probable Cause for filing Charges

Defendant next argues that because the violation notice served by Officer Morse was based on information told her by Trooper Nowlin, there existed no probable cause for bringing the charges. "Under the 'fellow officer' rule, 'probable cause is to be determed by the courts on the basis of the collective information of the police involved in the arrest, rather than exclusively on the extent of the knowledge of the particular officer who may actually make the arrest.'" Karr v. Smith, 774 F.2d 1029, 1031, (10th Cir. 1985) (quoting United States v. Troutman, 458 F.2d 217, 220 (10th Cir. 1972)). Furthermore, by its verdict of guilty, the district court

established not only that there was probable cause to bring the charges against Defendant, but that he was in fact guilty as charged beyond a reasonable doubt. United States v. Mechanik, 475 U.S. 66, 70 (1986). Thus, no error resulted from Officer Morse's reliance on information conveyed by Trooper Nowlin.

4. Enforcement of the Code Federal Regulations

Defendant maintains that he was not required to comply with 36 C.F.R. Sec. 261.6(h) because it is a regulation and not a law. He also asserts that he cannot be guilty of violating the regulation because no injured party, contract or commerce was involved.

Defendant's argument that he was not required to abide by the regulation is without merit. 16 U.S.C. Sec 551 "confers upon the forest service the duty to protect the forests from injury and

trespass, and the power to condition their use and prohibit unauthorized uses." City & County of Denver ex rel. Bd. of Water Comm'rs v. Bergland, 695 F.2d 465, 476 (10th Cir. 1982); see also United States v. Hymans, 463 F.2d 615, 617 (10th Cir. 1972) ("The Secretary of Agriculture is empowered by 16 U.S.C. Sec. 551 to make and promulgate rules and regulations concerning the 'occupancy and use' of National Forests.").

Likewise, Defendant's claim that he is not culpable due to the absence of an injured party, a contract or commerce is unsupportable. Defendant bases his argument on subsections of 36 C.F.R. Sec. 261.6 other than subsection (h), that refer to timber contracts, e.g., subsections (a), (b), (c), and (e).

We apply the plain and ordinary meaning of the regulations unless legislative intent is to the contrary. see

United States v. Eves, 932 F.2d 856, 860 (10th Cir.)(plain meaning of statute), cert. denied, 112 S. Ct. 236 (1991). Violation of the plain meaning of 36 C.F.R. Sec. 261.6(h) requires neither a contract nor commerce.

We also refect Defendant's argument that he was never confronted with an injured party. See United States v. Amon, 669 F.2d 1351, 1355 (10th Cir. 1981) (defendants' argument that court lacked jurisdiciton because it was not shown that they intended to or did harm society deemed frivolous and without merit), cert. denied, 459 U.S. 825 (1982). Accordingly, Defendant was subject to the restrictions imposed by 36 C.F.R. Sec. 261.6(h).

5. Publication and Notice of Regulation

Defendant's argument that 36 C.F.R. Sec. 261.6(h) was not published in the Federal Registger so he had no prior notice of it is meritless. The applicable

regulation was published at 49 Fed. Reg. 25450 (1984).*1

"The statute, [44 U.S.C. Sec 1507 (formerly 44 U.S.C. Sec. 307)] makes publication in the Federal Register the basis

f the presumption of validity, constructive notice, and judicial notice." United States v. Tijerina, 407 F.2d 349, 354 n.12 (10th Cir.), cert. denied, 396 U.S. 843 (1969). Therefore, Defendant had the requisite notice of the prohibitions set forth in 36 C.F.R. Sec 261.6(h) to subject him to penalties for its violation.

6. Right to Jury

Defendant next asserts that he was denied his Sixth Amendment right to be tried by a jury. We review de novo the question of denial of a criminal defendant's right to a jury trial. United

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*1
The citation to the Federal Register is referenced immediately following 36 C.F.R. Sec. 261.6(h).

States v. Bencheck, 926 F.2d 1512, 1514 (10th Cir. 1991). Here, Defendant was not entitled to a jury trial because he (1) was not at risk of serving more than six months' imprisonment,*2 (2) he did not show that any additional penalties he faced were so serious a jury trial was required even though he faced limited jail time, (3) there was no evidence in the record suggesting the government was "corrupt or overzealous" in charging Defendant, and (4) there was no indication that the judge was "compliant, biased, or eccentric." Id. at 1519-20 (quoting Duncan v. Louisiana, 391 U.S. 145, 156 (1968). Therefore, Defendant's constitutional right to a jury trial was not abridged.

7. Right of Counsel

We have reviewed the record in light of Defendant's allegation that he was

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*2 Pursuant to 16 U.S.C. Sec. 551, the maximum prison term for violating 36 C.F.R. Sec. 261.6(h) is six months.

denied his right to counsel. The record reveals Defendant's determination to represent himself at trial. Therefore, we find no error. See Faretta v. California, 422 U.S. 806, 836 (1975)(a defendant has the constitutional right to waive his right to counsel and to represent himself at trial).

8. District Court's Rulings During Trial

Defendant complains that various evidentiary rulings at trial were erroneous. "The trial court's ruling on the relevancy of evidence is reviewed for an abuse of discretion." Durtsche v. American Colloid Co., 958 F.2d 1007, 1013 (10th Cir. 1992). We have considered Defendant's arguments in light of the record, and we find no abuse of discretion in the district court's evidentiary rulings.

Defendant also alleges error in the

district court's entry of a plea of not guilty on his behalf upon his refusal to enter his own plea to the charges. No error was committed. "If a defendant refused to plead, . . . the court shall enter a plea of not guilty." Fed. R. Crim. P. 11(a)(1).

9. Sufficiency of the Evidence

Defendant contends that the evidence was insufficient to sustain the conviction. In reviewing the evidence in a criminal case for sufficiency, "the relevant question is whether, 'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979); accord United States v. Young, 954 F.2d 614, 618 (10th Cir. 1992)

The elements of the crime of

removing timber from a national forest without authorization are (1) removal of any timber, tree, or other forest product, (2) without authorization by a special-use authorization, a timber sale contract, or Federal law or regulation. 36 C.F.R. Sec. 261.6(h). Defendant has admitted that he took the aspen logs from the Salter Y area of the San Jan National Forest.*3 Trooper Nowlin testified that defendant did not have a permit for the logs. R. Supplemental Vol. IV, 43-44. Government witness John Welch established that the Salter Y area is on national forest land owned by

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*3 Defendant argues that because there are no trees evident in the photographs of the Salter Y area, he could not have removed the aspen logs from there. Testimony at trial established that although the area next to the intersection of the roads at Salter Y is devoid of timber, the Salter Y designation applies to the general area around the intersection applies to the general area around the intersection which is populated by pine, aspen, and coniferous trees, both standing and down. R. Supplemental Vol. 86-88.

the federal government. Id. 96, 100-101.

Defendant claims that he was authorized by 16 U.S.C. Sec. 477 and 480 to remove the logs from the national forest. Section 480, relating to civil and criminal jurisdiction, is inapposite. Secton 477 states, "The Secretary of Agriculture may permit, under regulations tobe prescribed by him, the use of timber and stone found upon national forest. . . ." (Emphasis added.) Nothing in either section authorizes Defendant to remove timber, trees, or other fopreest product without a permit or other authorization. Defendant relies heavily on United States v. United Verda Copper Co., 196 U.S. 207 (1905), to support his argument that he was entitled to remove timber from the national forest without a permit. In that case, the Court held that the Secretary of the Interior could not promulgate regulations ignoring language of the

authoriazing statute. Id. at 215-16. Here, Defendant does not allege that the applicable regulation disregards statutory dictates.

We determine that the evidence was sufficient for a rational trier of fact to find that Defendant removed timber, trees, or other forest products from the San Jaun National Forest without authorization. Consequently, we conclude that the evidence was sufficient to sustain the conviction.

10. Allocution

Defendant claims that his right of allocution was abridged because the district court interrupted his statement at the sentencing hearing. "Although the defendant has a right of allocution at sentencing, that right is not unlimited." United States v. Kellogg, 955 F.2d 1244, 1250 (9th Cir. 1992). Defendant did address the court at sentencing. He

attempted to reargue the merits of his trial defense. R. Supplemental Vol. V, 137-38. The district court told defendant that those arguments had previously been raised and rejected, and directed him to move along. Id. at 139. Defendant then concluded his allocution. Id. Under the circumstances, Defendant's right of allocution was not curtailed.

11. Sentence to Incarceration

Defendant claims that his sentence of three months' imprisonment is excessive. "[A] sentence within the statutory limits is invulnerable to attack on appellant review." United States v. McElreath, 412 F.2d 847, 847 (10th Cir. 1969); accord United States v. Brown, 784 F.2d 1033, 1039 (10th Cir. 1986). Because Defendant's sentence is within the statutorily prescribed maximum of six months, 16 U.S.C. Sec. 551, we will not disturb it.

12. Fine

Defendant also contends that the $2,500.00 fine imposed by the district court is not authorized by law. Defendant contends that the maximum fine is $500, pursuant to 16 U.S.C. Sec. 551. 18 U.S.C. Sec. 3571(b) however, raises the maximum fine for violation of 16 U.S.C. 551 to $5,000. See United States v. LaValley, 957 F.2d 1309, 1313, (6th Cir. 1992) (although 18 U.S.C. Sec. 1382 states maximum fine of $500, 18 U.S.C. Sec. 3571 raises ceiling on the fine to $5,000). Defendant's fine of $2,500. was within the statutory limits, and therefore is not subject to attack on appellate review. United States v. alfonso, 738 F.2d 369, 373 (10th Cir. 1984).

13. Other Claims

Defendant asserts additional grounds for relief. The following conclusory claims have not been developed adequately

by factual allegation or legal argument and are rejected without discussion. See Worthen V. Meachum, 842 F.2d 1179, app. at 1185 (10th Cir. 1988). (1) There existed a conspiracy among the two law enforcement officers, the prosecutor, and the district judge; (2) the two law officers committed perjury; (3) the charges were brought in bad faith or for malicious reasons; (4) the U. S. Constitution is a cortract sworn to be upheld by the judge and the law enforcement officers; (5) the government failed to disclose exculpatory evidence and denied meaningful discovery; (6) the district judge, prosecutor, and law officers were foreign agents required to register as foreign agents; and (7) Forest Service permits are an unauthoried tax.

Defendant's Request for Sanctions is DENIED.

The judgment of the United States District Copurt for the District of

Colorado is AFFIRMED.

The mandate shall issue forthwith.

Entered for the Court

John P. Moore

Circuit Judge

Filed July 1, 1992

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appelle	)	
v.	)	No. 91-1279
	)	
EDWARD G. NOVOTNY,	)	
	)	
Defendant-Appellant.		

ORDER Entered July 1, 1992

Before MOORE, TQACHA, and BRORBY, Circuit Judges.

This matter comes on for consideration of appellant's petition for rehearing.

Upon consideration whereof, the petition for rehearing is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

APPENDIX "B"

(2)

No. 92-681

FILED
DEC 16 1992
OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1992

EDWARD G. NOVOTNY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether Art. III, § 2, Cl. 3 of the Constitution or the Jury Trial Clause of the Sixth Amendment requires a trial by jury for the offense of removing timber from a national forest without authorization, where the maximum authorized penalty is six months' imprisonment and a $5,000 fine.

2. Whether the district court had jurisdiction to try petitioner.

3. Whether the district court improperly allowed the government to exceed its statutory authority in prosecuting petitioner.

4. Whether the district court imposed an excessive sentence upon petitioner in violation of the Eighth Amendment.

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No. 92-681

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the court of appeals, Pet. App. 1-22, is not published, but the judgment is noted at 968 F.2d 22 (Table).

JURISDICTION

The judgment of the court of appeals was entered on June 5, 1992. A petition for rehearing was denied on July 1, 1992. Pet. App. 23. The petition for a writ of certiorari was filed on October 5, 1992, and accordingly is out of time under the Rules of this Court. Sup. Ct. R. 13.1 and 13.4. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a bench trial in the United States District Court for the District of Colorado, petitioner, who represented himself, was convicted on one count of removing timber from the San Juan National Forest without authorization, in violation of 36 C.F.R. 261.6(h).[1] He was sentenced to a term of three months' imprisonment and was ordered to pay a fine of $2,500. The court of appeals affirmed.

1. On October 18, 1990, petitioner was hauling a trailer load of aspen logs in the San Juan National Forest when he was stopped at the Forest Service boundary by Colorado State Patrol Trooper Steven Nowlin. Trooper Nowlin asked petitioner where he had cut the wood, and petitioner identified an area located within the forest. Trooper Nowlin then asked petitioner if he had a permit authorizing him to remove the wood from the forest. Petitioner admitted that he did not have a permit but claimed that he did not need one because the forest belonged to the citizens and he had their permission to cut wood. Trooper Nowlin explained that a permit was necessary and that he would have to report petitioner's unauthorized removal of the wood to the Forest Service. Petitioner then went on his way. Pet. App. 2-3, 16; Gov't C.A. Br. 1-2.

About two weeks later, Trooper Nowlin accompanied Tracey Morse, a law enforcement officer for the Forest Service, to petitioner's residence. Officer Morse explained to petitioner that anyone desiring to remove wood from the forest needed a permit. Petitioner again

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[1] 36 C.F.R. 261.6(h) prohibits the "[r]emov[al] [of] any timber, tree or other forest product, except as authorized by a special-use authorization, timber sale contract, or Federal law or regulation."

admitted that he had no permit, and he claimed that Forest Service regulations did not apply to him because he was a United States citizen and everything on public land was free for citizens. Officer Morse then served petitioner with a violation notice for removing the logs from the forest without a permit. Pet. App. 3, 16; Gov't C.A. Br. 2-3, 9.

2. Following a bench trial that resulted in petitioner's conviction, the court of appeals affirmed in an unpublished judgment order. Pet. App. 1-22. The court rejected petitioner's claim—purportedly founded upon his status as a "free citizen," *id.* at 3—that the district court lacked personal and subject matter jurisdiction to try him. The court of appeals held that the district court had subject matter jurisdiction under 16 U.S.C. 551 (authorizing the Secretary of Agriculture to make rules and regulations for the protection of national forests, and subjecting violators of such rules and regulations to criminal sanctions) and 18 U.S.C. 3231 (conferring on federal district courts original jurisdiction over all offenses against the laws of the United States). Pet. App. 5-6. Noting that the basis for petitioner's claim that the district court lacked personal jurisdiction over him was "not clear," the court characterized that claim as "frivolous," given that petitioner offered "no support" for it, was charged by information with violating a federal law, and appeared before the district court in connection with that charge. *Id.* at 6-7.

Next, the court rejected petitioner's claim that he was not required to abide by 36 C.F.R. 261.6(h) because, in his view, it was not a law and his conduct did not affect commerce or involve a contract or an injured party. The court observed that 16 U.S.C. 551 required petitioner to

abide by the regulation, Pet. App. 9-10, and that conduct need not affect commerce or involve a contract or an injured party in order for it to fall within the ambit of the regulation, *id.* at 10-11.

The court also rejected petitioner's claim that he was denied his Sixth Amendment right to a jury trial. Reviewing that claim *de novo*, the court held that petitioner was not entitled to a jury trial in this case for several reasons. First, 16 U.S.C. 551 sets six months as the maximum prison term for a violation of 36 C.F.R. 261.6(h). Second, petitioner "did not show that any additional penalties he faced were so serious a jury trial was required even though he faced limited jail time." Third, "there was no evidence in the record suggesting the government was 'corrupt or overzealous' in charging" petitioner. Fourth, "there was no indication that the judge was compliant, biased, or eccentric." Pet. App. 12-13 (internal quotation marks omitted).

Finally, the court rejected petitioner's claims that his three-month prison term was excessive and his fine unauthorized. The court explained that both the prison term and the fine were within statutory limits: The prison term did not exceed the six-month maximum prison term prescribed by 16 U.S.C. 551, and although 16 U.S.C. 551 set a maximum fine of $500, 18 U.S.C. 3571(b)(6) raised that maximum to $5,000. Pet. App. 19-20.[2]

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[2] Petitioner raised a host of other claims, all of which the court of appeals rejected either on the merits or—where they were stated in "conclusory" fashion and not "developed adequately by factual allegation or legal argument," Pet. App. 20-21—without discussion. *Id.* at 7-9, 11-12, 13-19, 20-21. Petitioner does not raise any of those claims in this Court.

ARGUMENT

Petitioner renews his claims that the district court lacked jurisdiction to try him for a violation of 36 C.F.R. 261.6(h), that if it had jurisdiction it should have given him a jury trial, and that his sentence was excessive. Pet. 13-30. Only petitioner's jury trial claim, Pet. 25-26, merits the attention of this Court.

1. The court of appeals correctly ruled, Pet. App. 12-13, that petitioner was not entitled to a jury trial since the maximum prison term for a violation of 36 C.F.R. 261.6(h), a Class B misdemeanor, is six months. See 16 U.S.C. 551; 18 U.S.C. 3559(a)(7), 3581(b)(7). In *Blanton* v. *City of North Las Vegas*, 489 U.S. 538, 543 (1989), this Court held that an offense carrying a maximum prison term of six months or less is presumed to be a petty offense—*i.e.*, one for which the Sixth Amendment does not require a jury trial—and that a defendant can overcome the presumption "only if he can demonstrate that any additional statutory penalties, viewed in conjunction with the maximum authorized period of incarceration, are so severe that they clearly reflect a legislative determination that the offense in question is a 'serious' one."

As the court of appeals explained, petitioner "did not show that any additional penalties he faced were so serious a jury trial was required even though he faced limited jail time." Pet. App. 13. Although, in addition to six months' imprisonment, petitioner was subject to a maximum fine of $5,000, see 18 U.S.C. 3571(b)(6), that penalty was not so onerous as to elevate 36 C.F.R. 261.6(h) to a "serious" offense requiring a jury trial. Incarceration and fines are "intrinsically different," as the Court explained in *Blanton*, and a fine "cannot approximate in severity the loss of liberty that a prison term entails." 489 U.S. at 542 (quoting *Muniz* v. *Hoffman*, 422 U.S. 454,

477 (1975)). Indeed, *Blanton* strongly suggested that the $5,000 fine authorized by Congress for petty offenses would not render an offense "serious" for jury trial purposes. 489 U.S. at 544-545; see 18 U.S.C. 19 (defining a "petty offense" in the case of an individual defendant as one for which the maximum fine is no greater than $5,000 (the amount set for petty offenses in 18 U.S.C. 3571(b)(6) (Class B and C misdemeanors) and 3571(b)(7) (infractions)); 18 U.S.C. 1 (Supp. IV 1986) (same), cited at *Blanton*, 489 U.S. at 544-545.

Although we believe that the judgment below was correct, the Tenth Circuit's decision in this case conflicts with the Ninth Circuit's decision in *United States* v. *Nachtigal*, 953 F.2d 1389 (1992) (Table), petition for cert. pending, No. 92-609. We have filed a petition for a writ of certiorari seeking review of the Ninth Circuit's judgment in *United States* v. *Nachtigal*. Our petition raises the question whether a jury trial is constitutionally required for the offense of driving under the influence of alcohol, where the maximum authorized penalty is six months' imprisonment and a $5,000 fine. Because the Court's disposition of our certiorari petition in *Nachtigal* may affect the proper disposition of this case, the Court may wish to hold this petition pending its disposition of our petition in *Nachtigal*.

2. The court of appeals correctly rejected petitioner's claim that the district court lacked jurisdiction to try him. Pet. App. 5-7. The judicial power extends to all cases arising under the Constitution and laws of the United States. U.S. Const. Art. III, § 2, Cl. 1. The district courts "have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." 18 U.S.C. 3231. As the court of appeals observed, in 16 U.S.C. 551, a federal statute,

Congress authorized the Secretary of Agriculture to promulgate rules and regulations for the protection of national forests. Pet. App. 5. Pursuant to that authority, the Secretary promulgated 36 C.F.R. 261.6(h), a federal regulation.

The information in this case charged petitioner with the unauthorized removal of timber from the San Juan National Forest on October 18, 1990, "all in violation of 16 U.S.C. Section 551 authorizing 36 CFR Section 261.6(h)." A federal law enforcement officer served petitioner with a notice of violation, and petitioner appeared in district court in connection with that notice. As a general rule, the presence of the defendant before the court gives the court personal jurisdiction over him. See *United States* v. *Crews*, 445 U.S. 463, 474 (1980); *Frisbie* v. *Collins*, 342 U.S. 519, 522 (1952); *Ker* v. *Illinois*, 119 U.S. 436, 444 (1886). Accordingly, the district court had both personal and subject matter jurisdiction to try petitioner.

3. Petitioner frames his third question presented as follows: "Did the inferior Tribunal error [*sic*] by allowing the Executive Branch to exceed their authority and limitations granted by Acts of Congress." This question is too vague to be capable of meaningful response. Accordingly, under this Court's Rule 14.5, the question should be denied review because of petitioner's failure to present clearly "whatever is essential to a ready and adequate understanding of the points requiring consideration."

To the extent that the question can be narrowed at all, it appears to pertain to the following portion of the body of the petition, Pet. 16:

> Government agencies are not allowed to exceed the authority granted to them by Congress. The commissioner stated that the Petitioner "stole something from the national forest". But * * * the National Forest[] is public forest, and * * * Petitioner is one of The People[] that the public forest belongs to.
>
> The Petitioner * * * cannot steal what is his, nor steal something from the forest service which it does not own.

That analysis is frivolous and does not merit the attention of this Court.

4. The court of appeals correctly rejected petitioner's contention that his sentence was excessive. Pet. App. 19-20. As the court explained, both the three-month term of imprisonment and the $2,500 fine imposed on petitioner were within statutory limits. *Ibid.* Appellate courts generally do not disturb sentences imposed for non-capital felony offenses—let alone sentences imposed for misdemeanors, such as 36 C.F.R. 261.6(h)—that fall within statutorily prescribed limits, absent an abuse of discretion by the sentencing court. See *Harmelin* v. *Michigan*, 111 S. Ct. 2680, 2703 (1991) (plurality opinion); *Hutto* v. *Davis*, 454 U.S. 370, 373-374 (1982). Petitioner points to nothing in the record that remotely suggests that such an abuse occurred here. Accordingly, petitioner's claim warrants no further review.

CONCLUSION

With respect to the first question presented, the petition for a writ of certiorari should be held pending the disposition of the petition filed in *United States* v. *Nachtigal*, No. 92-609, and then disposed of as appropriate in light of that disposition. In all other respects, the petition should be denied.

Respectfully submitted.

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Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

VICKI S. MARANI
Attorney

DECEMBER 1992

Supreme Court, U.S.
F I L E D
JAN 15 1993
OFFICE OF THE CLERK

IN THE ONE SUPREME COURT

FOR THE UNITED STATES OF AMERICA.

OCTOBER TERM, 1992

No. 92-681

EDWARD G. NOVOTNY

Citizen/Petitioner

vs

UNITED STATES, et al.

Respondents.

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PETITIONERS RESPONSE TO BRIEF OF THE UNITED STATES

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EDITOR'S NOTE

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QUESTIONS PRESENTED FOR REVIEW

1. Did the inferior Administrative Tribunal error by assuming jurisdiction over the Petitioner and subject matter.

2. Did the Administrative Tribunal error by denying Petitioner the Constitutionally secured Right of a Citizen to "trial by Jury" in ALL Criminal Cases as secured under the Constitution for the United States of America, Article III, Sec. 1, and 2, Clauses 1 and 3, and Articles of Amendment VI.

3. Did the inferior Tribunal error by allowing the Executive Branch to exceed their authority and limitations granted by Acts of Congress.

4. Did the inferior Administrative Tribunal error by imposing an excessive and unusual sentence/fine upon the Citizen Petitioner in contravention of Congress and Articles of Amendemt VIII.

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IN THE ONE SUPREME COURT

FOR THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

No. 92-681

EDWARD G. NOVOTNY

Citizen/Petitioner

vs.

UNITED STATES, et al.

Respondents.

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PETITIONERS RESPONSE TO BRIEF OF

THE UNITED STATES

OBJECTION

Petitioner objects to the Respondent changing the wording and meaning of the questions presented. Petitioner believes that they are clear enough. Petitioner's Appeal was docketed on Oct. 5, 1992. The 10th Circuit Court denied Petitioner's reconsideration on July 1, 1992.

Petitioners Appeal was timely mailed, but because of delay in the mail, it was not docketed until Oct. 5, 1992

STATUS OF PETITIONER

The petitioner has continually claimed to be a free, natural born Citizen, or a Colorado State Republic Citizen, subject only to the Common Law in this instance, which has not been disputed. He has never intentionally admitted to being a "person", or "individual", nor a "citizen of the United States", nor being in some "corporate" capacity, nor a "14th Amendment citizen", or subject to government regulations, as he does not receive any benefit therefrom. His claimed status has never been objected to.

JURISDICTION

Jurisdiction of this Court is invoked because of 36 C.F.R. 261.6, and under Title 28 U.S.C. Sec. 1254(1), and under

Art. 3, Sec. 2, Cl. 2 of the United States Constitution.

RESPONSE

Following a bench trial over the Petitioners objection, (trans pa 9) the Petitioner was found guilty of removing timber products (firewood) from the national forest without a permit. He was sentenced to three months in prison, and fined $2,500.00. The Court of Appeals did affirm.

Petitioner has never denied that he cut and removed the "firewood" from somewhere within the public forest area, but claimed that he did not need a permit because he was one of the free people to whom the public forest belonged, nor was he subject to the C.F.R.. The Respondent is in error, as the Petitioner has never knowingly claimed or admitted to be a "United States citizen". Petitioner has continually claimed to be a free sovereign

Citizen, or a Colorado State Citizen under the Common Law, which has never been disputed.

Officer Morse did "swear" that the Petitioner was "not a timber sales contractor, your a personal use firewood gatherer, and those are two separate entities", (trans pa 77) and claimed he needed a permit before removing firewood, but could not cite or present any evidence of that law/regulation, before issuing the citation, (presentence report) nor did she present the law requiring it at the hearing.

How could the Petitioner illegally gather, cut and remove "firewood" as claimed by the forest service agent, the Respondents, the 10th Circuit Court, and the Tribunal, when Congress, 16 U.S.C. 477 and 36 CFR 223.5 allows "free" use of "firewood", and 36 CFR 219.3 plainly exempts "firewood" from being a regulated

"timber product", and holdings of this Court allow him to cut and remove "firewood" for personal use. Then where is the "crime" that the Petitioner committed that warranted being put in prison for? Or do we have a conflict of Law that must be decided by this Court? Or was Petitioner put in prison for challenging a foreign system of regulation that he is unaware of, and does not belong to?

The Petitioner was informed that the fine was close to $100.00, (Trans pa 25) with no other jeopardy mentioned to him by the Tribunal.

The Court of Appeals rejected the Petitioners claim that he was a "free Citizen" and that the federal district court lacked personal and subject matter jurisdiction.

The Court of Appeals held that the district court had subject matter jurisdiction under 16 U.S.C. 551. But

which relies on the 55th Act of Congress that reserves free use for the people. Where does a "Citizen" become subject to foreign jurisdiction, foreign rules and regulations, without consent, contract or knowledge, unless done by deceit or fraud?

The Petitioner did not personally testify, because the federal district tribunal did not declare their true character, state their authority over the Petitioner, nor state the true nature and cause of the accusation. Therefor, the petitioner who was under no contract, took the Common Law approach of being innocent until proven guilty, and the record will reflect that he formed his questions of the government's witnesses to prove that there was no crime, no commerce, no business, no contract, no violation of known established regulation or law, nor was it shown that the Petitioner was one subject to any C.F.R..

The United States convicted the petitioner for doing what he was doing, without any evidence of any illegal activity, or law violation. Subject matter jurisdiction can only be achieved by a contract which the government is a party to.

The Respondent states that "there was no indication that the judge was compliant, biased, or eccentric." By "ORDER", of Aug. 7, 1991, the Tribunal said, "Because of what I thought were aggravating circumstances in this case, defendant was sentenced to serve a three-month term in prison". Further it said, that the reasons were stated in open court. The only reasons known to the Petitioner were that he cut and removed "firewood", and challenged their authority. Petitioner was not informed that defending or doing what the law and statute allows could be "aggravating" and

therefore, jailable.

The Petitioner contends that for the stated reasons in this entire Appeal, that the judge was corrupt or overzealous' in his actions, and was therefore in violation of Amendment VIII, excessive fine and was cruel and unusual punishment.

Therefore Petitioner disagrees with the Respondent that the court of appeals correctly ruled that Petitioner was not entitled to jury trial.

The Constitution is a superior document. Marbuary vs. Madison, 5 U.S. 137, 177 (1803)

Art. III, Sec 2, Cl. 3 & 4, and Amendments VI, VII, IX, & X, secures Petitioners right to trial by jury in "ALL" criminal cases. No other logical conclusion could be arrived at or can be aduced from the clear language of the Constitution. 16 USC 551 is patently unconstitutional and void as it purtains

to the Petitioner.

Further trial by jury is mandatory, not discretionary in a criminal case, as cited in Duncan vs. State of Louisiana, 391 U.S. 145, at 155 that:

> "A right to jury trial is granted to criminal defendants in order to prevent oppressions by the Government". Citing Singer vs. United States, 380 U.S. 24, 31, 13 L Ed 2d 630, 635, 85 S Ct. 783, (1965)

And this Court held that, "Where rights secured by the Constitution are involved, there can by no rule making or legislation which would abrogate them." Miranda vs. Arizona, 384 U.S. 436, 491. (1966)

The Respondent is being misleading when it cites United States v. Nachtigal, 953 F.2d 1389 (1992), petition for cert. pending, No. 92-609. Machtigal was convicted for driving under the influence of alcohol, or DUI. DUI, is a crime, and is under a drivers license, or "privilege" granted by Government, which sets limits

and restructions. Further, it is an "agreement" or "privilege" which a government agency is a party, therefore there is a "public interest".

Further, Respondent cites United States v. Crews, 455 US 463, 63 L Ed 2d 537, 100 S Ct 1244, (1980) where there was a common law crime of robbery, with an injured party.

How can the Respondent compare a "privilege" or "contract" or license violation of a state, or a violent crime of robbery, with one exercising a Inalienable RIGHT secured by the Constitution(s), and authorized by Congress and established Law.

The only contract violation here is the violation of the oath of the government's agents/employees, who swore to support the Constitution, but failed to adhere to the specific terms and conditions.

It is well established that the people did not give Congress or its agencies the authority to regulate the very people who wrote the contract. "History is clear that the first ten amendments to the constitution were adopted to secure certain common law rights of the people, against invasion by the Federal Government." Bell vs. Hood, 71 F.Supp., 813, 816, (1947) U.S.D.C..

Agents Morse and Nowlin both admitted that they had sworn an oath to support the Constitution of the United States, the very Constitution that the Petitioner has relied on from the very begining.

The federal district tribunal, the 10th Circuit Court of Appeals, the Attorneys, and the agents/employees are at best, in error.

The petitioner was found guilty of being in violation of 36 C.F.R. 261.6(h), a federal regulation. The Appellees cite

16 U.S.C. 551 for the criminal act and for assuming jurisdiction and authority.

Congress did not exceed its authority; its agents, employees and Respondents exceeded their authority. Morse and Nowlin admitted that they took an oath to support the Constitution and the Laws made in pursuance thereof. The Respondent agents knew or should have known that the intent of Congress was to regulate business and occupation of the forest and its forest products, which was for profit and therefore a public interest. This was done through "timber Sales Contracts" and by "permits", which all pertained to business and occupations.

It has been stated that "Every Act of a Legislature shall embrace but one subject, which be clearly expressed in its title, * * *". Bond vs. Phelps, 191 P2d 938, at 946 (1948)

> It was stated that, Our system of law is built upon precedents, and if every past decision can be reopened in every

> case and one cannot lay one's own course of bricks on the secure foundation of the courses laid by others who had gone before him the labor of lawyers and judges would be increased almost to the braking point. I.D. at 945.

The Appellees stated that Congress has authorized the Secretary of Agriclture to promulgate rules and regulations for the protection of national forest from deprevations. (business) The Petitioner agrees, but Art. V. Sec. 21 of the Colorado Constitution is the same when it states that:

> "No bill, except general appropriation bills, shall be passed containing more than one subject, * * * ".

Further this is consistent, as it was stated in that:

> All of the details contained in the title of the Act * * * relate to the same subject, and to gather constitute but one general subject * * * . Upham v. Bramwell, 210 P 706, 707.

To go back to the record, agent Morse by "sworn testimony" stated that "you are not a timber sales contractor your a

personal use gatherer and those are two separate entities" (trans pa 77)

The Appellees contend that the Petitioner claims that he "* * * cannot steal what is his, nor steal something from the forest service which it does not own", is frivolous and does not merit the attention of this Court. The Petitioner disagrees for the following reasons:

First, where do the Respondents aquire the power and authority to charge, convict, sentence, fine and imprison any Citizen for using "public" forest products (firewood) for personal use, which they do not own, when Congress, the Law, and this Court recognizes his right to have and use?

Further, this public forest still belongs to people of the sovereign State of Colorado, (CRS 3-1-101, 102, 103) (1987) and it is being held in trust for the benefit of the people of this

sovereign state, of which the Petitioner is one of those people, and not for the Department of Agriculture.

Therefore the forest agents/employees charged and imprisioned the Petitioner for removing firewood from property that they did not own.

The Respondent states that "government agencies are not allowed to exceed the authority granted to them by Congress". If this Court accepts that theory and claim, that only supports the Petitioner's claim that he has the right to cut and remove the "firewood", which he has claimed from the beginning, as the Department of Agriclture regulates the forest against deprevations committed by "business, occupations, by Corporations", by permits and timber sales contracts.

Further it is public record that there is a lien on all public forest property on public record to further show that the

United States of America's counter claim is frivolous, and not the Petitioners.

Last, Petitioner did agree to appear at the Federal District Court to prepare for a Judicial trial by jury, but not a federal district Administrative commersioner hearing. When he found that he was to have a hearing, he objected to the proceedings, and did not voluntirely appear again. Petitioner contends that trickery and deceit were involved to get him there bordered on fraud, and both the Durango and Denver Triibunals were at fault.

Signed without prejudice, 1-207 U.C.C., Amendments I, IX and X, Art. 28, C.S.C.
Respectfully Submitted:

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